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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

IN RE: BABY FOOD PRODUCTS
LIABILITY LITIGATION

This document relates to:

ALL ACTIONS

Case No. 24-MD-301-JSC

MDL 3101

**DEFENDANTS' SUBMISSION IN
SUPPORT OF ENTRY OF DIRECT
FILING ORDER**

Date: June 20, 2024

Time: 11:00 a.m. PT

Location: Courtroom 8

19th Floor 450 Golden Gate Ave.
San Francisco, CA 94102

1 Pursuant to Pretrial Order 3, Defendants Beech-Nut Nutrition Company, Gerber Products
 2 Company, Hain Celestial Group, Inc., Nurture, LLC (formerly Nurture, Inc), Plum, PBC, Sprout
 3 Foods, Inc., Walmart Inc., Amazon.com Services LLC, Campbell Soup Co., and Whole Foods
 4 Market Services, Inc., (“Defendants”) submit the following position statement in support of entry
 5 of a Direct Filing Order.

6 The parties have reached a compromise on all but one provision of a Direct Filing Order.
 7 Defendants’ proposed Order includes a prohibition against filing multi-plaintiff complaints, other
 8 than those involving derivative claimants. The disputed provision reads:

9 With the exception of any complaint that includes plaintiffs who assert solely
 10 derivative claims, no multi-plaintiff complaint may be directly filed in MDL
 11 No. 3101. Complaints including more than one non-derivative claimant shall
 12 not be dismissed, provided that any plaintiff to such complaint files an amended
 13 complaint within 30 days of being informed of this provision. Amendments to
 14 sever multi-plaintiff complaints shall not require leave of Court.

15 Plaintiffs do not want any provision restricting their ability to file multi-plaintiff complaints. The
 16 disputed provision is consistent with the Federal Rules of Civil Procedure, helpful to the parties in
 17 organizing the case and pursuing resolution, and has been adopted by other MDL courts,
 18 including most recently by Judge Cote in the Acetaminophen – ASD-ADHD MDL and Judge
 19 Rosenberg in the Zantac MDL.

20 Defendants’ proposed provision preventing multi-plaintiff complaints is aligned with
 21 Federal Rule of Civil Procedure 20. Rule 20 provides that multiple plaintiffs may be joined in a
 22 single action only if (A) they assert relief “jointly, severally, or in the alternative with respect to
 23 or arising out of the same transaction, occurrence, or series of transactions or occurrences,” and
 24 (B) the actions involve a question of law or fact common to all plaintiffs. Fed. R. Civ. Proc.
 25 20(a)(1). Courts routinely find that personal injury claims of unrelated plaintiffs are not properly
 26 joined because they do not arise out of the same transaction or occurrence; rather, they involve
 27 plaintiffs who used different products, had different medical histories, and suffered distinct
 28 injuries. *See, e.g., Adams v. I-Flow Corp.*, No. CV09-09550 R(SSx), 2010 WL 1339948, at *8
 (C.D. Cal. March 30, 2010) (finding that mere use of the same medical device did not justify
 joinder of plaintiffs who had different medical histories, had different surgeries performed by

1 different physicians, and had different risk factors); *Ellis v. Evonik Corp.*, 604 F. Supp. 3d 356,
 2 376-79 (E.D. La. 2022) (severing claims based, in part, on the significant differences in the
 3 timing and length of each plaintiff's exposure to a toxic substance); *In re Yasmin & Yaz*
 4 (*Drospirenone Mktg., Sales Practices & Prods. Liab. Litig.*, 779 F. Supp. 2d 846, 856 (S.D. Ill.
 5 2011) (finding misjoinder of plaintiffs where plaintiffs "were prescribed different drugs...by
 6 different doctors at different times, have different medical histories, and utilized different
 7 pharmacies" were not properly joined); *Bartis v. Biomet, Inc.*, No. 4:13-CV-00657-JAR, 2021
 8 WL391708, at *2 (E.D. Mo. Feb. 4, 2021) (holding that even under a "very broad" interpretation
 9 of Rule 20 joinder, plaintiffs' claims are not "transactionally linked" if the plaintiffs' only
 10 argument is that the plaintiffs used the same product and received the same treatment for their
 11 injury).

12 In this MDL, each of the plaintiffs ate different baby food products manufactured or sold
 13 by different entities at different times. The products contained different ingredients and
 14 accordingly, different levels of trace heavy metals. Each plaintiff has a different medical history,
 15 suffered a different purported injury, and received different treatment. Simply put, these cases
 16 involve no common transaction or occurrence.

17 Ordering Plaintiffs who have severable claims to file separate actions promotes efficiency.
 18 Because personal injury claims of unrelated plaintiffs are severable under Rule 21, preventing
 19 their filing at this juncture will save the Court the effort of deciding future motions to sever.
 20 Additionally, the filing of separate complaints is critical to the organization and resolution of the
 21 case. In coordinated proceedings with no prohibition against multi-plaintiff cases, it is
 22 Defendants' experience that Plaintiffs' firms routinely join dozens of plaintiffs, even plaintiffs
 23 represented by different firms. It can be difficult to identify which firm represents each plaintiff
 24 or which facts in the complaint pertain to each plaintiff. Under these circumstances, it becomes
 25 impossible to identify relevant cases for bellwether selection, to sort out which product use or
 26 other allegations pertain to each plaintiff at the summary judgment phase, or to understand
 27 exactly how many plaintiffs each firm has (and what the key allegations are as to those plaintiffs)
 28

1 when parties discuss resolution, whether by motion practice directed at all plaintiffs alleging
 2 specific facts (e.g., use of a particular type of product) or settlement.

3 For these reasons, MDL courts routinely include a prohibition against multi-plaintiff
 4 complaints. *In re: Acetaminophen – ASD-ADHD Prods. Liab. Litig.*, MDL 3043, Dkt. 238 (Dec.
 5 2, 2022) (“With the exception of complaints that include plaintiffs who are immediate family
 6 members or who solely assert derivative claims, no multi-plaintiff complaints may be directly
 7 filed in the MDL.”) (attached as Exhibit C); *In re: Zantac (Ranitidine) Prods. Liab. Litig.*, MDL
 8 2924, Dkt. 422 (“With the exception of complaints that include plaintiffs who solely assert
 9 derivative claims, no multi-plaintiff complaints may be directly filed in MDL No. 2924.”)
 10 (attached as Exhibit D). Other MDL courts have noted the problems which can arise by permitted
 11 multi-plaintiff complaints, which may disguise jurisdictional and venue shortcomings. *See In re:*
 12 *Roundup Prods. Liab. Litig.*, MDL 2741, Dkt. 7196 (discussing multi-plaintiff lawsuit, which
 13 permitted plaintiffs to file claims in violation of the rules of personal jurisdiction and venue).

14 Defendants respectfully request that the Court enter the direct filing order proposed by
 15 Defendants, which includes a prohibition against multi-plaintiff complaints in Paragraph I(B).

16 Respectfully submitted,

17 Dated: June 13, 2024

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